
Attempts to legalise ‘saiko’: The trans-shipment of fish at sea from industrial trawlers to canoes

April 2019

Background

‘Saiko’ is the practice of transferring or ‘trans-shipping’ fish at sea from industrial trawlers to canoes. It arose as an informal trading system, whereby unwanted fish caught by industrial vessels would be exchanged at sea for goods brought by canoes. Over time, *saiko* has evolved into a well-organised and lucrative industry in its own right. It is contributing to overfishing and the rapid decline of Ghana’s inshore fishery, on which over two million people along the coast depend for their livelihoods.

Saiko is prohibited under Ghana’s fisheries laws¹, attracting a fine of between US\$100,000 and US\$2 million². The minimum fine increases to US\$1 million where catches involve juvenile fish or the use of prohibited fishing gears³.

Attempts to legalise *saiko*

In October 2018, the Minister for Fisheries and Aquaculture Development made a statement to industry representatives that *saiko* trans-shipments at sea between industrial trawlers and canoes could be considered legal provided they are carried out under supervision⁴. The Minister subsequently confirmed this statement at the 2018 International Symposium on Fisheries Crime (FishCRIME 2018) co-hosted by the United Nations Office on Drugs and Crime, and a meeting with the European Commission to discuss implementation of measures against illegal fishing in October 2018⁵.

The Minister has since clarified that fisheries observers on board trawl vessels can be tasked with supervising trans-shipment to ensure fish are above the minimum size requirements in the 2010 Fisheries Regulations, LI 1968.

Since this announcement, *saiko* landings at Elmina have increased considerably, with up to 10 or 15 *saiko* canoes landing fish each day. *Saiko* activity had been negligible prior to October 2018, following a drive to enforce the law against *saiko* in 2018, resulting in at least one high profile arrest of a *saiko* canoe in Apam in August 2018⁶.

Provisions of national legislation concerning *saiko*

Section 132 of the 2002 Fisheries Act, Act 62, provides that trans-shipment may take place under the ‘supervision of an authorized officer’, or under an arrangement approved in advance by the Council (Board) of the Fisheries Commission.

‘132. Transshipment to be supervised

(1) Unless authorised in writing by the Commission, a fishing vessel shall not be used for transshipment of fish in the fishery waters without the supervision of an authorised officer or under any other arrangement and conditions approved in advance by the Council.’

The 2010 Fisheries Regulations, LI 1968, describe a number of types of trans-shipment activities that are prohibited by Ghanaian vessels and/or in Ghana’s waters. This includes the trans-shipment of fish at sea from Ghanaian industrial vessels to canoes (i.e. *saiko*), which is specifically prohibited under Regulation 33(2).

¹ Regulation 33(2) of the 2010 Fisheries Regulations LI 1968.

² Section 132(2)(a) of the 2002 Fisheries Act 625.

³ Section 88A of the 2002 Fisheries Act 625, as inserted by the 2014 Amendment Act 880.

⁴ This announcement was made at a meeting of representatives of the Ghana Industrial Trawlers Association (GITA), By-Catch Collectors Association and Chinese owners of trawl vessels: Abrante, K.B. (12.10.18), ‘Saiko fishing gets green light to officially operate in Ghana’, *GhanaWeb*, accessed 7.2.19.

⁵ Meeting of the EU-Ghana Working Group held within the framework of implementation of the EU Regulation to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing: *Council Regulation (EC) No. 1005/2008*.

⁶ Asiedu-Addo, S. (9.8.18), ‘Be transparent in dealing with ‘saiko’ culprits –EJF, Hen Mpoano’, *Graphic Online*, accessed 7.2.19.

'Transshipment of fish

33. [...]

(2) *A person shall not tranship fish from a Ghanaian industrial vessel to a semi-industrial vessel or to canoes or vice-versa.'*

Regulation 33 was enacted pursuant to Section 139 of the 2002 Fisheries Act. Section 139(1)(g) of the Act allows the Minister to make regulations on trans-shipment.

'139. Regulations

(1) *The Minister may, on the recommendations of the Council, by legislative instrument, make Regulations [...]*

(g) *on catching, loading, landing, handling, transshipping, transporting, possession and disposal of fish;*'

Interpretation of the law on saiko

There has been considerable debate around the implications of the Minister's statements on the legality of *saiko*, which led to a resurgence of *saiko* activities at Elmina port. To provide clarity on the issue, EJF sought an opinion from lawyers at the TaylorCrabbe Initiative to determine whether *saiko* can be considered legal if carried out under supervision.

The legal opinion is very clear that Regulation 33 limits the activities and forms of trans-shipment that the Fisheries Commission may authorise and supervise under Section 132 of Act 625. Since the Minister has chosen to exercise his/her power to enact the 2010 Fisheries Regulations, only those forms of trans-shipment that are **not expressly prohibited** under the Regulations may be considered legal if supervised by an authorised officer. **As saiko is prohibited in the Regulations, the legal opinion concludes it cannot be authorised.**

In other words, the trans-shipment of fish at sea from industrial trawlers to canoes (*saiko*) has been rendered illegal by the 2010 Fisheries Regulations, whether or not carried out under supervision. As a result, it is not possible for the Minister to use an administrative directive or other decision to 'legalise' *saiko* under supervision and override clear provisions of law.

Ghana's legal obligations at the regional level

Finally, it is noted that any policy to 'legalise' *saiko* would be contrary to Ghana's undertakings as a Contracting Member of the Fisheries Committee for the West Central Gulf of Guinea (FCWC).

Article 16(3) of the 2013 Convention on Minimum Requirements for Access to the Fishery Resources of the Area of the FCWC provides that the '*transshipment of catches at sea is prohibited except in verifiable emergency situations*'.

This requirement is reiterated in the FCWC Strategy to Combat Illegal Trans-shipment at Sea, agreed at the tenth FCWC Ministerial Conference in December 2017. The strategy requires that '*transshipment from any fishing vessel flagged to a Member State or authorized to fish in the EEZ of a Member State take place in a designated port*'⁷, except under circumstances of force majeure.

⁷ FCWC (2017). Strategy to combat illegal transshipment at sea. December 2017.

<https://www.fcwc-fish.org/activities/projects/watf/reports-documents/1519-fcwc-strategy-to-combat-illegal-transshipment-at-sea.html>